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June 27, 2019

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

**Re: WC Docket Nos. 10-90, 14-58, 07-135 and CC Docket No. 01-92
Pineland Telephone Cooperative, Inc.
Notice of *Ex Parte***

Dear Ms. Dortch:

On Tuesday, June 25, 2019, Dustin Durden of Pineland Telephone Cooperative, Inc. (“Pineland”), Christopher W. Savage of Davis Wright Tremaine LLP and Douglas Meredith of JSI (collectively, “Pineland Representatives” or “Representatives”) met via teleconference with Jamie Susskind of the Office of Commissioner Brendan Carr. The purpose of the meetings was to discuss Pineland’s Petition for Reconsideration¹ of the Report and Order released by the Federal Communications Commission (“FCC” or “Commission”) on December 13, 2018 in the above referenced dockets.² The attached presentation was also provided to Ms. Susskind.

During the meetings, the Pineland Representatives explained that the A-CAM II offer in the *Dec. 13th Order* embodied a different approach from that taken when the FCC made the initial A-CAM I offer, as well as when it made subsequent revised offers to A-CAM I carriers. Under the initial A-CAM offer, no funding was made available for census blocks with existing fiber-to-the-premises (“fiber”) or cable technologies, and the offer contemplated that most of the funded locations would receive 10/1 Mbps service. The current revised A-CAM I offer improved the program, but left many rural customers without funding for 25/3 Mbps service. A-CAM II, however, funds 25/3 Mbps service to

¹ Pineland Telephone Cooperative, Inc., Petition for Reconsideration, WC Docket No. 10-90, et al. (fil. Mar. 21, 2019) (“Petition”).

² See *In the Matter of Connect America Fund, ETC Annual Report and Certifications, Establishing Just and Reasonable Rate for Local Exchange Carriers, and Developing a Unified Intercarrier Compensation Regime*, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, WC Dockets No. 10-90, 14-58, 07-135, and CC Docket No. 01-92, FCC 18-176, released December 13, 2018 (“*Dec. 13th Order*”).

locations in all fully funded census blocks, including blocks that contain preexisting fiber or cable. While this certainly is commendable, no provision was made for A-CAM I carriers to elect A-CAM II. This creates a situation where thousands of rural customers will not receive support for the now-standard 25/3/Mbps service and where there will be serious, arbitrary and irrational distinctions among the funding received to support rural customers' service under A-CAM I versus A-CAM II.

For example, A-CAM I carriers will likely have to charge higher prices than will A-CAM II carriers – and certainly higher than they otherwise would need to charge – to deploy fiber and maintain 25/3 Mbps service in census blocks that were excluded from funding under A-CAM I due to the presence of pre-existing fiber. A-CAM II carriers will not face this pressure to raise prices, because under A-CAM II, even census blocks with existing fiber will receive funding. Also, some locations in funded A-CAM I census blocks will receive no more than the required 10/1 Mbps speed, while all locations in funded A-CAM II census blocks will have service with at least 25/3 Mbps speed. This means that customers in A-CAM II areas will be able to enjoy the benefits that higher speeds can offer – such as real-time applications, video, gaming, distance health care – which require speeds faster than 10/1 Mbps.

The Representatives also explained how granting the Petition will fix this anomaly by allowing A-CAM I carriers to elect A-CAM II. The Representatives explained (referencing the attached presentation) that, based on publicly available information, if all A-CAM I carriers were to elect A-CAM II, this fix would cost *no more than* \$63.3 million, while obliging the electing carriers to deploy and support 25/3 Mbps service for 234,100 locations. This amounts to approximately \$272 per location on an annual basis – less than 30 percent of the cost per location embodied in the A-CAM II offer. The Representatives further explained that to avoid double recovery, the A-CAM I support that a carrier electing A-CAM II has already received in excess of legacy support would be netted against the new A-CAM II support. Moreover, the Representatives committed to providing additional materials for the record to provide more detail regarding how this netting process would work and highlighted the fact that all parties that commented on the Petition supported it, with no filed opposition. This shows widespread industry support for favorable action on the Petition.

Regarding the commitment made in this meeting and in previous *ex parte* meetings conducted last week by Pineland,³ the following explains, in more detail, the Petition's proposal on how the Commission should address the two years of A-CAM I support that the A-CAM I carriers electing A-CAM II have been received to avoid over-recovery. The principle Pineland intends to be applied is to put A-CAM I carriers electing the A-CAM II offer in a position that parallels that of legacy carriers electing A-CAM II.

³ See, Letter from John Kuykendall, JSI Vice President, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 14-58, 07-135 & CC Docket No. 01-92 (June 21, 2019).

*Non-Glidepath Carriers.*⁴ Over the past two years, non-glidepath carriers have received A-CAM I support that is greater than they had previously received in annual legacy support. An A-CAM I non-glidepath carrier has therefore received more support under A-CAM I than the carrier would have received as a legacy carrier that had not elected the A-CAM I offer. To avoid over-recovery, the support these carriers receive should be subject to a “netting-out” process. Under this process, the amount of legacy support the carrier received in 2015 is subtracted from the carrier’s annual A-CAM I support. This identifies the amount over legacy levels that the carrier received by virtue of its election to accept the A-CAM I offer. The resulting amount is multiplied by two, to account for the two years in which A-CAM I support exceeded the amount of legacy support. This total is then used to reduce A-CAM II support. This puts these carriers in the same position with respect to A-CAM II as they would have been had they remained legacy carriers. The reduction is spread out over a period of at least four years in order to avoid spikes and dips in disbursements that could occur if the total were deducted from A-CAM II support over a shorter time-span.

Glidepath Carrier. Glidepath carriers received *less* support under A-CAM I than they would have received as legacy carriers. For glidepath carriers electing to accept the A-CAM II offer, therefore, there has been no over-recovery and therefore there is no need to net anything against A-CAM II support. Under Pineland’s proposal, these carriers would simply begin receiving support at A-CAM II levels. Note that even though these carriers have received support at levels *lower* than legacy levels for the last two years, Pineland does not propose to provide any additional funding to make up that difference, even though it means that glidepath carriers will end up worse off than they would have been had they simply remained legacy carriers and then chosen to elect to accept the A-CAM II offer.

Please direct any questions regarding the filing to the undersigned.

Sincerely,



John Kuykendall
JSI Vice President
301-459-7590; jkuykendall@jsitel.com

cc: Jamie Susskind

Attachment

⁴ A “non-glidepath” carrier is a carrier whose annual A-CAM I support was greater than the legacy support it received in 2015. A “glidepath” carrier is one whose annual ACAM I support is less than its 2015 legacy support.




Pineland Telephone Cooperative, Inc.

EX PARTE PRESENTATION TO THE FEDERAL COMMUNICATIONS COMMISSION


JUNE 19-20, 2019



The A-CAM Anomaly

- A goal of A-CAM is to fight the urban-rural digital divide by getting robust broadband service to rural customers, subject to a reasonable budget
 - A-CAM II envisions more rapid deployment of faster speeds than A-CAM I – implementation milestones of 25/3 Mbps, versus 10/1 Mbps with only one 25/3 milestone at the end for a portion of the 10/1 locations
 - This is a great improvement, but the implementation details created arbitrary distinctions among rural customers
 - We can make higher speeds available to more rural customers without arbitrary distinctions by harmonizing the conditions applicable to A-CAM I and A-CAM II
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The A-CAM Anomaly - History

- **First A-CAM I Offer**: Didn't fund census blocks with existing fiber to the premises (fiber) or cable technologies, and contemplated that most of the locations would receive 10/1 Mbps service
 - **Current Revised A-CAM I offer**: Improved the program, but left many rural customers without funding for 25/3 Mbps service
 - **A-CAM II offer**: Funds 25/3 Mbps service to locations in all fully funded census blocks, some with some existing cable or fiber – which make sense – but...
 - A-CAM I carriers can't elect A-CAM II, so ***thousands of rural customers will not get the now-standard 25/3 Mbps service***
 - This creates ***serious, arbitrary, and irrational distinctions*** among rural customers funded under A-CAM I versus A-CAM II
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The A-CAM Anomaly - Details

A-CAM I

- A-CAM I banned funding in census blocks with reported existing fiber or cable
- Most A-CAM I funding was for 10/1 Mbps
- A-CAM I was open to almost all rate-of-return carriers

A-CAM II

- Permits funding for census blocks where the provider (or affiliate) has some fiber or cable
- The A-CAM II offer was not available to carriers that elected A-CAM I funding
- Result: ***Thousands of customers in A-CAM I areas are effectively stuck with 10/1 Mbps service obligations***

Fixing the A-CAM Anomaly

- Rural communities under A-CAM I funding should be able to get the full benefit of 25/3 Mbps service and not be limited in some areas to 10/1 Mbps service
- Real-time applications, video, gaming, distance learning, distance health care, *etc.*, all require speeds faster than 10/1 Mbps
- Households and businesses with multiple devices cannot sustain data-hungry activities on an A-CAM I-level 10/1 Mbps service
- Excluded locations are not funded ***at all***, which can create huge broadband disparities between rural census blocks

Fixing the A-CAM Anomaly

- The FCC has the opportunity to harmonize its policy for funding census blocks that already have some broadband facilities
- Specifically, carriers that elected A-CAM I should be permitted to elect A-CAM II, with already-received A-CAM I support in excess of legacy support netted against the new A-CAM II support (to avoid over-recovery)
- This would bring uniformity to the FCC's support mechanism for 25/3 Mbps service
- The status quo irrationally and unfairly relegates thousands of rural customers of A-CAM I carriers to 10/1 Mbps service in funded blocks or no broadband service at all in blocks that were excluded

Fixing the A-CAM Anomaly

- There is no rational basis, in any sensible broadband policy, for the disparity that has been created between A-CAM I and A-CAM II
- The A-CAM Anomaly undermines efficient use of high-cost funds to maximize deployment of 25/3 Mbps service in rural areas
- It leaves thousands of customers of A-CAM I carriers stuck with 10/1 Mbps service, which will widen the rural-urban divide

Fixing the A-CAM Anomaly - Costs

- Actual costs will depend on how many A-CAM I carriers choose A-CAM II, but they will clearly be reasonable
- JSI estimates that granting the petition would permit roughly 234,100 additional rural locations to be upgraded to 25/3 Mbps, in two groups:
 - 65,100 locations that were ***unserved*** under A-CAM I (because there was some fiber or cable in the census block)
 - 169,000 locations that ***only have 10/1 Mbps service*** under A-CAM I (because of A-CAM I's lower service level obligations)

Fixing the A-CAM Anomaly - Costs

- New funding would only be given for the locations in blocks that were excluded from funding; for the 10/1 Mbps locations, the A-CAM II service commitment goes to 25/3 Mbps with no new funding
- This would amount to roughly \$63.6 million (applying A-CAM funding on a per-location basis to the 65,100 unserved locations) – less than 1% of 2018 USF budget
- When the additional 169,000 locations that will now have 25/3 Mbps rather than 10/1 Mbps are taken into account, fixing the A-CAM Anomaly would get 25/3 Mbps service to a total of 234,100 locations for only about \$272 per location on an annual basis – less than 30% of the A-CAM offer level

Fixing the A-CAM Anomaly - Costs

- To avoid over-recovery, the FCC should net out A-CAM I disbursements that exceed 2015 Legacy Support amounts for the same period against ten-year A-CAM II support
- To avoid spikes and dips in disbursements, the A-CAM II payments should be reduced to account for those initial A-CAM I payments over a period of at least four years
- This netting-out process will eliminate any carrier incentive to opportunistically shift from A-CAM I to A-CAM II – the shift will not be a profit center, and will come with real, increased service commitments

Industry Supports Fixing the Anomaly

- **NTCA**: The FCC should extend A-CAM II “to operators willing to make this additional commitment to their communities regardless of prior elections” (pp. 6-7)
- **WTA**: It is “inequitable” for A-CAM I electors to be unable to obtain support in blocks where they had some existing fiber or cable infrastructure capable of 10/1 Mbps service (p. 3)

Industry Supports Fixing the Anomaly

- **ITTA**: The “inequitable” treatment of A-CAM I and A-CAM II regarding the fiber and cable census blocks was not addressed by subsequent A-CAM I revisions (p. 3)
- **West Carolina Rural Telephone Cooperative, Inc. (WCTel)**: “No community should be relegated to less than 25/3 Mbps by the Commission’s incongruent FTTP policy when a carrier is willing and able, with attending support, to provide 25/3 Mbps broadband service over the term of the A-CAM II offer” (pp. 2-3)

Thank You

PINELAND TELEPHONE COOPERATIVE

JSI

DAVIS WRIGHT TREMAINE LLP

